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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/727,823

12/03/2003

Brian J. Brozell

18039 USA

7485

27081

7590

09/12/2007

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

09/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/727,823

Applicant(s)

BROZELL ET AL.

Examiner

James N. Smalley

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26, 28-35, 40-42, 48-51 and 53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26, 28-35, 40-42, 48-51 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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DETAILED ACTION

Response to Amendment

1. Due to the new grounds of rejection, this action is **Non-Final**.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 26 and 28-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Specification fails to enable a mode whereby the closure only has one lug, thus rendering the limitation "at least one internal lug" in line 7 as not being enabled by the disclosure. To the best degree the Examiner understands the claimed invention, the disclosure limits at least one pair of lugs, but not one lug.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 28-29, 40 and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiss et al. US 4,032,028 in view of Swartzbaugh et al. US 4,399,920.

Reiss '028 teaches a threaded container and closure with a spring element which serves to lock lugs between container threads to prevent a child from removing the container. However the interlock occurs on a slope and does not have right-angled interlocks which would be more secure.

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Swartzbaugh '920 teaches closure lugs (36, 37) and container lugs (25) which further include a flange (27) extending circumferentially in a clockwise direction, and which prevent removal of the closure from the container, and furthermore provide right-angle interlocks which are more secure than the angled connection between the lug and thread of Reiss '028. Examiner notes closure lug cam surface (38) will cam the closure downwardly with respect to the container, with a downward force applied to the closure.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Reiss '028, replacing the child safety lugs with those taught by Swartzbaugh '920, motivated by the benefit of providing angle interlocks which are more secure than the angled connection between the lug and thread of Reiss '028.

5. Claims 30-34, 40 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiss et al. US 4,032,028 in view of Swartzbaugh et al. US 4,399,920 as applied above, and further in view of Buono US 4,270,664.

Reiss '028 as modified fails to teach the closure having a stepped profile.

Buono '664 teaches a closure with a threaded portion and closure lugs on a stepped portion of the sidewall. The inherent benefit is to precisely locate the lugs with respect to a wider closure neck, known in the art to be used for strengthening a neck to prevent damage during opening of child-safety caps which require strong downward forces when disengaging the child resistant features.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Reiss '028, providing a stepped interior which would allow the cap to be used on a thickened neck container in order to provide increase resistance to fracture during opening.

Regarding claim 51, because the invention meets all claimed structure, there will inherently be circumferential stretching of the closure.

6. Claims 35 and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiss et al. US 4,032,028 in view of Swartzbaugh et al. US 4,399,920, in view of Buono US 4,270,664 as applied above to claim 30 and further in view of Thorsbakken US 4,553,678.

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Reiss '028 fails to teach a biasing member with a plurality of spaced spring segments.

Thorsbakken '678 teaches the interchangeability of a diaphragm-type spring member (40) and a ring with a plurality of spring arms (43) which reduces material consumption.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spring member of Reiss '028, forming it with a plurality of spring arms, as taught by Thorsbakken '678, motivated by the benefit of reducing material consumption.

Regarding claims 41-42, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Reiss '028, forming the spring member integral with the closure in order to prevent it becoming separated from the cap.

Response to Arguments

7. Applicant's arguments with respect to claims 26, 30-35, 40-43 and 48-51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

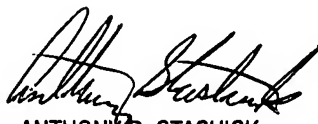
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns



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